

Message Text

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43

ACTION ARA-10

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FM AMEMBASSY KINGSTON

TO SECSTATE WASHDC 6443

UNCLAS KINGSTON 4409

E.O. 11652: N/A

TAGS: PGOV, PINS, JM

SUBJECT: GUN COURT RULED UNCONSTITUTIONAL

REF: KINGSTON 3795

1. THE COURT OF APPEAL BY MAJORITY DECISION (2-1) RULED DEC 5 THAT THE GUN COURT ACT IS ULTRA VIRES THE CONSTITUTION OF JAMAICA, THUS SETTING ASIDE THE CONVICTION OF THE APPELLANT. THIS DECISION CONFLICTS WITH ONE HANDED DOWN BY ANOTHER DIVISION OF THE COURT (REFTEL) IN OCTOBER.

2. ACCORDING TO ATTORNEY GENERAL ROBINSON THE CONSTITUTIONALITY OF THE GUN COURT ACT HAS NOT BEEN RESOLVED BY THE COURT'S LATEST DECISION. "A LEGAL DILEMNA HAS BEEN CREATED THAT COULD HAVE BEEN AVOIDED HAD THE APPEAL BEEN STAYED PENDING THE DISPOSAL OF THE APPEAL TO THE PRIVY COUNCIL IN THE FIRST SET OF CASES. THERE ARE NOW TWO CONFLICTING DECISIONS ON THE SAME SUBJECT, BUT THE CROWN IS FOLLOWING THE EARLIER DECISION. THE GUN COURT IS STILL IN BUSINESS." AS FAR AS THE PEOPLE WHO HAVE BEEN TRIED ALREADY IN THE GUN COURT ARE CONCERNED, THE GOVERNMENT IS NOT PREPARED TO DO ANYTHING UNTIL THE PRIVY COUNCIL MAKES A RULING.

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3. COMMENT: SHOULD THE PRIVY COUNCIL FIND THE GUN COURT LEGISLATION UNCONSTITUTIONAL, GOVERNMENT INTENDS TO INTRODUCE AND IN FACT HAS STARTED DRAFIN ON A CONTINGENCY BASIS, NEW LEGISLATION WHICH WILL GIVE IT POWERS SIMILAR TO THOSE OF THE GUN COURT ACT.

GERARD

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